

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

IA NO: GA/1/2024
APO/40/2024
WPO 1873/2023
SRI BINOD BIHARI SAMAL
VS
THE KOLKATA MUNICIPAL CORPORATION AND ORS

BEFORE:

The Hon'ble JUSTICE ARIJIT BANERJEE

The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 28th March, 2024.

Appearance:
Mr. Anup Kr. Mukhopadhyay, Adv.
Mr. Abjijit Sarkar, Adv.
...For the appellant.
Mr. Biswajit Mukherjee, Adv.
Mr. A. Farmania, Adv.
For KMC.
Mr. Alak Kumar Ghosh, Adv.
Mr. Raghunath Chakraborty, Adv.
Mr. Supratik Syamal, Adv.
Mr. Sonali Sengupta, Adv.
For respondent nos. 6 and 7.
Mr. Anand Farmania, Adv.
For State of West Bengal.

The Court:- Affidavit of service filed in Court today be kept with the records.

By consent of the parties, the appeal and the application are taken up together for hearing and disposal.

A judgment and order dated November 13, 2024, whereby an application made by the present appellant for recall of an order

dated January 2, 2024, passed by a learned single Judge in WPO/1873/2023, was dismissed, is the subject matter of challenge in this appeal at the instance of the proforma-respondent no. 7 in the writ petition.

It appears that the private respondents herein are the owners of a particular premises. It also appears that the present appellant is a tenant in respect of a portion of the said premises.

The private respondents in this appeal made a representation to the appropriate authority in Kolkata Municipal Corporation (in short 'KMC'), contending that the building in question is in a dilapidated state. The building needs to be pulled down and a new building has to be constructed. Accordingly, permission was sought for.

Alleging that such representation was not receiving the attention of the competent authority in KMC, the private respondents herein approached a learned single Judge of this Court by filing WPO/1873/2023. The appellant herein was impleaded as proforma respondent no. 7 in the writ petition.

Before the learned Judge, learned Advocate for KMC filed written instructions to the effect that the representation of the writ petitioner therein had been considered and an order had been

passed by the competent authority. From the written instructions, the learned Judge noticed that the plan proposal submitted by the writ petitioners for construction of a G+4 storeyed residential building has been approved by the competent authority. Sanctioned plan has been issued by the authorities. The learned Judge disposed of the writ petition by an order dated January 2, 2024, by directing the parties to take steps in terms of the written instruction that was placed before the Court by the Executive Engineer of KMC.

The appellant herein filed an application being GA/1/2024 for recall of the aforesaid order dated January 2, 2024.

It was contended by the applicant before the learned Judge that the order dated January 2, 2024, was obtained by suppression of material facts and by abuse of process of Court. It was submitted that 'no objection' from the applicant/proforma respondent no. 7, who is a tenant of the concerned property, has not been obtained. Taking advantage of the order dated January 2, 2024, the writ petitioners are applying force on the proforma respondent no. 7/applicant to vacate the property in question.

The learned Judge dismissed the recalling application by observing as follows:

“I am of the opinion that the same is absolutely a private dispute between the landlord and the tenants. The Court has not passed any order directing eviction of the tenants from the subject premises. If the proforma respondent alleges that the sanctioned plan has been obtained by practising fraud, then appropriate steps may be taken for revocation/cancellation of the sanctioned plan in accordance with law.”

Being aggrieved, the proforma respondent no. 7 in the writ petition has come up by way of this appeal.

Learned Advocate for the appellant says that the order dated January 2, 2024, was obtained by concealing material facts, by practising fraud on Court, by abusing the process of Court, by making false suggestion and the like.

We notice that on the date the order dated January 2, 2024, was passed, the present appellant was not represented before the learned single Judge. To our query as to whether or not the present appellant was served with notice of the writ petition, learned Advocate for the appellant fairly says that notice was served. However, for medical reasons the appellant could not appear before the learned Judge. That did not absolve the writ petitioners of the duty to make full disclosure before the Court,

which the writ petitioners failed to do. Hence the appeal Court should intervene.

Even if we accept the explanation furnished for non-appearance of the appellant herein before the learned single Judge on the day the order dated January 2, 2024, was passed, we still do not find any valid ground for interfering with the order dated February 13, 2024, impugned in this appeal. The learned Single Judge by the parent order dated January 2, 2024, which has not been challenged by the appellant herein, merely directed the parties to act in terms of the decision taken by the Kolkata Municipal Corporation on the representation of the private respondents herein. Such decision of KMC is not under challenge at anybody's instance before any competent forum, as of date. Hence the learned Judge was completely justified in passing the order dated January 2, 2024, and in refusing to recall the said order by the order impugned in this appeal. We find no reason to interfere with the order sought to be assailed in this appeal. The appeal and the connected application fail and are dismissed.

Learned Advocate for the appellant says that the appellant should be granted liberty to challenge the order of KMC including the order sanctioning building plan in favour of the writ petitioner

herein. We do not think any such liberty is necessary. If the appellant is entitled to do so in law, he can always take such steps.

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(ARIJIT BANERJEE, J)

(SUPRATIM BHATTACHARYA, J.)

dg/